

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) 14/BB/2017

IN

I.A 42/17

Order delivered on: 30<sup>th</sup> August 2017

**IN THE MATTER OF COMPANIES ACT, 2013**

**AND**

**IN THE MATTER OF SECTION 7 OF  
INSOLVENCY & BANKRUPTCY CODE**

**READ WITH RULE 4 OF THE**

**INSOLVENCY & BANKRUPTCY CODE**

**(APPLICATION TO ADJUDICATING AUTHORITY) RULES 2016**

**AND**

**IN THE MATTER OF**

**EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED**

**Edelweiss Asset Reconstruction Company Limited,  
Edelweiss House, Off CST Road,  
Kalina, Santacruz (East),  
Mumbai-400098.**

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**PETITIONER**

Vs

**M/s Falcon Tyres Limited,  
K.R.S Road, Metagalli, Mysore.**

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**RESPONDENT**

**Impleading Applicant:**

**Falcon Tyres Employees Union (R),  
M/s Falcon Tyres Limited  
K.R.S Road, Metagalli,  
Mysore-570016.**

Coram: Hon'ble Shri. RatakondaMurali, Member (Judicial)  
Hon'ble Shri. Ashok Kumar Mishra Member (Technical)

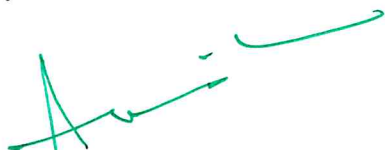
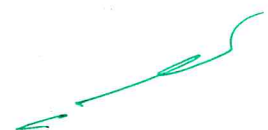
For the Petitioner(s): 1) Mr. Vikram Trivedi, Advocate  
2) Ms. Suchitra, Advocate

For the Respondents: 1) Ms. Amrutha Varshini M.C – JSM Law Partners, Advocate  
2) Mr. Clifton D'Rozario – Manthan Law, Advocate

Present: **Shri. Ashok Kumar Mishra, Member (Technical) – Author**

**ORDER**

This application is filed under Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of the Impleading Applicant for Impleading **Falcon Tyres Employees Union (R)** which is a registered and recognized union of the Respondent Company Falcon Tyres Limited.

The averments made in the Interlocutory Application are briefly described hereunder:-

It is averred that, the Impleading Applicant is the registered and recognised Union of Falcon Tyres Limited having Reg. No. Mys 127/76 with sole bargaining power with a total No. of 2500 employees, which include permanent, badlis, apprentices and contract workmen presently employed with Falcon Tyres Limited.

It is further averred that, the said Falcon Tyres Limited (hereinafter referred to as the said Company) has its plant in Mysuru where it commenced production in 1975, manufacturing and marketing a wide range of tyres and tubes, under the 'DUNLOP' brand name, there are more than 2500 employees, which include permanent, badlis, apprentices and contract workmen presently employed with the company. It is submitted that the factory in Mysuru has a turnover of Rs.1,000 crores per year, making a profit of Rs 100 crores to Rs. 120 crores. It is submitted that due to the mismanagement of the said Company, the lives and livelihoods of the workmen have been put at risk. This Impleading Application is being filed to protect the lives and livelihood of the aforesaid 2,500 workers and to ensure and protect their interest.

The Counsel for Applicant stated that, due to the Company faced with economic devastation, the Applicant Union has taken considerable efforts to convince the State Government to intervene and ensure that the said company is not shut down. This has resulted in a series of dialogue with all stakeholders including the Applicants from April 2015 onwards till date. The solemn and bonafide endeavour of the Applicant Union is to ensure that the company is revived so as to protect the lives and livelihoods of more than 2500 workers and make the company profitable once again so that all outstanding statutory dues are cleared.

The Counsel for Applicant further stated that, thereafter, shockingly, Falcon Tyres Limited announced the suspensions of work/operations at the Mysore Plant effective from 05.04.2015 in an illegal and untenable manner. Conciliation proceedings were initiated before the Deputy Labour Commissioner-2 in this regard, who admitted the matter of illegal stoppage of production treating it as apprehended lockout.

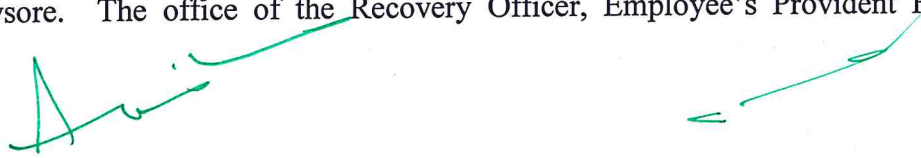
The Counsel for Applicant further stated that, on 18<sup>th</sup> June 2015 the High-Level Committee consisting of the Minister for Higher Education and Tourism, Minister for Labour and other Members of the Legislative Assembly held a meeting where the Management of Falcon Tyres, the Applicant Union and other interested parties participated. The said Committee resolved to restart production, and that dues of workers would be paid in instalments and it was further resolved that the various other parties, including banks, the district administration and the Government would co-operate with the functioning of the factory, and no coercive action would be taken against the industry. Minutes of the meeting dated 18<sup>th</sup> June 2015 is produced as **Annexure-B.**

The Counsel for Applicant further stated that, thereafter no fruitful and credible steps were taken by the management despite all these repeated efforts by the Applicant Union, and the same was deemed as an illegal lock-out and was prohibited by the Government vide order bearing No. Lab.Dept/624, IDM2016 dated 17<sup>th</sup> September 2016.

The Counsel for Applicant further stated that, since this caused great fear and uncertainty amongst the workmen, and in order to safeguard the interest of the workmen, the Applicant Union had approached the Hon'ble Karnataka High Court in Writ Petition No.5270/2017. The Hon'ble Karnataka High Court vide order dated 10<sup>th</sup> February 2017 in Writ Petition No. 5270/2017 has given liberty to the Applicant Union to approach the Hon'ble Court in the event that any action was taken against the workmen. The order of the Hon'ble Karnataka High Court dated 10<sup>th</sup> February 2017 in Writ Petition No.5270/2017 is produced as **Annexure-E.**

The Counsel for Applicant further stated that, the earned wages for the period of 3 months and 22 days from 20.10.2016 to 09.01.2017 and other benefits as per the settlement has also been claimed under Section 33-C(1) of the Industrial Dispute Act for an amount of Rs 10,01,61,832/- and the same is presently pending.

It is further stated that, with regard to failure of the management of Falcon Tyres Limited to deposit the employee's share of the provident fund under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, a case under Section 405 and 406 of the Indian Penal Code has been registered against them by the Metagalli Police Station, Mysore. The office of the Recovery Officer, Employee's Provident Fund



Organization has also issued an order of attachment of immovable property dated 31<sup>st</sup> August 2016 for Rs. 4,13,97,070/- (Rupees Four Crores Thirteen Lakhs Ninety Seven Thousand and Seventy Only) for the period from February 2014 to January 2015. The provident funds dues for the subsequent period are to be ascertained.


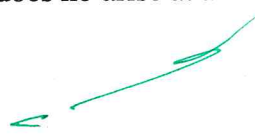
The Counsel for Applicant further stated that, the Management of Falcon Tyres Limited has failed to remit the TDS deducted from the employees' salaries to the Income Tax Department from September 2013.

It is also stated by the Applicant Counsel that, the gratuity amount due to the workmen as of 31<sup>st</sup> March 2017 would be an amount of Rs.13,51,34,430/- (Rupees Thirteen Crores Fifty One Lakhs Thirty Four Thousand Four Hundred and Thirty Only).

It is also stated by the Applicant Counsel that, in the event of closure, the closure compensation would amount to around Rs.13,51,34,430/- (Rupees Thirteen Crores Fifty One Lakhs Thirty Four Thousand Four Hundred and Thirty Only). Apart from the same, the workmen would also be entitled to notice pay of 3 months wages amounting to amount Rs.3,84,98,862/- (Rupees Three Crores Eighty Four Lakhs Ninety Eight Thousand Eight Hundred and Sixty Two Only).

It is also stated by the Applicant Counsel that, the Applicant Union being an interested party in these proceedings, it is necessary that they may be impleaded in the same. Hence, it is submitted that the Impleading Applicant is a necessary party in the present Application to decide the questions involved therein. It is submitted that the Applicant Union has just become aware of the proceedings before this Tribunal, and is hence approaching the same. It is prayed that the Applicant Union be permitted to place on record further pleadings and documents to further their submissions.

Even the Financial Creditor/ M/s Edelweiss Asset Reconstruction Company Ltd., filed statement of objections with the following averments:-

1. At the outset it is respectfully submitted that the present Application filed by the Falcon Tyres Employees Union ("**Union**") does not fall within the scope of the Insolvency & Bankruptcy Code, 2016 ("**the code**") as the Code neither prescribes impleading/hearing any party nor provides that the workmen of the Corporate Debtor be considered in the Insolvency process at the stage of admission. In fact, the code clearly provides for submission and consideration of claims by the Workmen and Employees of the Corporate Debtor at the appropriate stage in admission of the Application under section 7 of the Code and Subsequent publication. Thus the question of impleading the Union now in the present Application filed under section 7 of the code, does not arise at all.
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2. Furthermore the code also provides for a "Resolution Plan" which facilitates proposals from the person's interested to rescue the Corporate Debtor, thereby creating value and taking care of all the interested stake holders in the CIRP process at the appropriate time. As envisioned under the Code, timely resolution of Insolvency & Bankruptcy would support development of credit markets and encourage entrepreneurship and would also improve ease of doing business and facilitate more investments leading to higher economic growth and development, thus as the code provides for consideration of the workers dues at the appropriate stage, as also a plan to rescue such Corporate Debtors, impleading the Union at this stage would delay the present proceedings which would in any case not be in the interest workers. Lastly, impleading the Union in the present Application when its contentions are in any case to be considered post admission during the filling of proof of claims , would not only lead to unnecessary delay but would also be against the mandate of the Hon'ble High Court of Karnataka, to decide the matter expeditiously
3. It is respectfully submitted that in any case any orders passed in the Application under section 7 of the Code will no way prejudice the interest of the Union for reasons as under
  - a) The financial condition of the Corporate Debtor is precarious and the factory had closed operations way back in 2015 and hence it was imperative that the Interim Resolution Professional as enunciated under the Code is appointed to look into the affairs of the company;
  - b) That the code promulgates an Insolvency Resolution process during which period the Financial Creditors would assess whether the Corporate Debtor's business is viable to continue and consider the options for their rescue and revival as mentioned above.
4. Impleading the Union at this premature stage, will not protect lives and livelihood of the workers as sought by the Union but will not only delay the present insolvency process.
5. In conclusion, the Applicant repeats and reiterates what is stated in the Application filed under section 7 of the code and denies anything contrary thereto and/or inconsistent therewith. The Applicant states that nothing contained in the present Application for Impleadment shall be deemed to be is not dealing with the Application for Impleadment in a paragraph wise matter it has answered and dealt with all contentions raised by the Union. Even otherwise, as per the Union's own revelation in the Application, as briefly enumerated below, the Corporate Debtor is in dire need of the Resolution plan and the Application under section 7 of the Code ought to be admitted at the earliest:



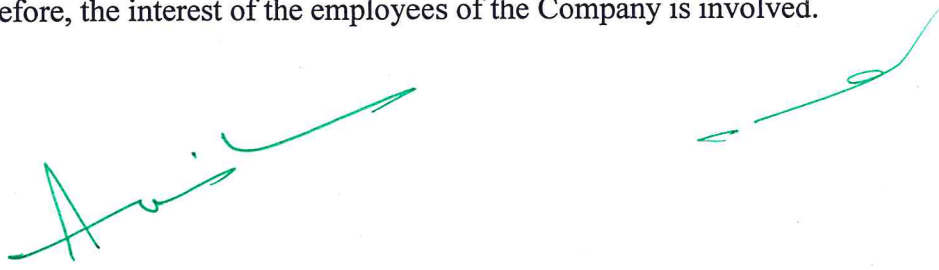
- i. The lives and livelihood of the workmen have been put to risk due to mismanagement by the Corporate Debtor.
- ii. The Corporate Debtor had entered into a wage settlement Agreement with the Union but failed to make payment of the earned wages as contemplated therein;
- iii. The solemn and bona-fide endeavour of the Union is to ensure that the Corporate Debtor is revived so as to protect the lives and livelihood of more than 2500 workers so that all outstanding statutory dues are cleared.
- iv. Despite constitution of a "High Level Committee for Revival of Falcon Tyres Ltd;" the Corporate Debtor announced suspension of work/operations at the Mysore plant effective from 5/4/20115 in an illegal and untenable manner;
- v. Thereafter though the production was resumed, the Corporate Debtor began to reduce the production after few months. At a meeting held, it was decided to identify a new company to take over the Corporate Debtor and clear the dues of the pending wages. However, the Corporate Debtor failed to take any steps in that regard.
- vi. The Employees have dedicatedly served for several decades and are now left in a vulnerable state due to the financial mismanagement and misappropriation of the company funds by the Chairman and directors of the Corporate Debtor.

It is therefore imperative that the present Application be admitted and the Interim Resolution Professional (IRP) be appointed without any further delay to look into the affairs of the Corporate Debtor

6) In the light thereof, it is respectfully submitted that, the Application for impleadment is filed at a premature stage and not within the provisions of the Code and hence ought not to be allowed.

We have heard the Counsel for Applicant. We have also heard the Counsel appearing for Financial Creditor - **Edelweiss Asset Reconstruction Company Limited** who has raised certain objections for impleading the Applicant as a party to the main petition on the ground that, it is filed at a premature stage and that anyone can file Resolution Plan in case Interim Resolution Professional (IRP) is appointed, on that ground the Applicant is not a necessary party.

The Applicant has alleged that the Falcon Tyres Limited became indebted to the Members. Therefore, the interest of the employees of the Company is involved.



The Petitioner in the main petition will not be prejudiced if Union comes on record. Interestingly, the Respondent Company has not filed any objection for this Application. It is deemed Falcon Tyres Limited has no objection for impleading the Applicant.

The learned Counsel for Applicant has relied on the decision of Apex Court reported in AIR1983SC75 – National Textile Workers’ Union and Ors. Vs P.R Ramakrishnan and Ors. – (1983) 53 Comp Cas 184 (SC) which states as follows:-


“that although an employee of a company as an employee of a company cannot claim to appear and be heard in a petition for winding-up of the company as a matter of right, yet in any appropriate case the Court in a winding-up proceeding may require or permit any employee to appear at any stage of a winding-up proceeding and hear him, if the Court be of the opinion that the employee or the employees should be heard in the interests of administration of justice and for proper disposal of any matter. It appears that in this very case, the Court at an earlier stage of the proceeding had, in fact, heard the employees and redressed their just grievance.”

It is also averred that, various provision of the Insolvency and Bankruptcy Code, 2013 recognise and protects the interests of the workman. A claim in respect of provision of employment falls within the definition of “**operational debt**” under section 5(21) as such a workman to whom wages are due, for instance, would be an “**operational creditor**” under section 5(20) of the Insolvency and Bankruptcy Code, 2016, Section 20 mandates that the interim resolution professional shall make every endeavour to manage the operations of the corporate debtor as a going concern, which is corporate parlance implies that the company should function without the threat of liquidation for the foreseeable future. Under section 60(5)(c) of the Code, this Hon’ble Tribunal has the jurisdiction to entertain or dispose of any question of priorities. Thus, it is apparent that this Hon’ble Tribunal has the jurisdiction and would have the occasion in these proceedings to pass necessary orders which pertain to the workmen of the company. Under these circumstances, it is essential that the workmen through their Union are made parties to the proceedings.

Considering the grievances of Union, since it is a matter where Interim Resolution Process (IRP) is initiated against the company. Therefore, the Applicant is a proper and necessary party and be impleaded as a party.

In the result petition is allowed and the Applicant - Falcon Tyres Employees Union is impleaded as 2<sup>nd</sup> Respondent to the main petition.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL